RECENT CASE NOTES

ASSIGNMENT—ASSIGNMENT OF HEIR'S EXPECTANCY—ANCESTOR UNITED IN CONVEYANCE.—A deed purported to convey, for ample consideration given to the grantor, an expectancy in an undivided sixth of real estate then owned by the grantor's mother, from whom the grantor expected to inherit the interest as one of her six children. The mother united in the conveyance in order to secure the interest to the grantee after her death. The deed contained a covenant of warranty by the grantor but not by his mother. *Held,* that the deed was unenforceable as against the son but was valid as a conveyance by the mother. Clay, J., *dissenting*. *Snyder v. Snyder* (1921, Ky.) 235 S. W. 743.

At common law any assignment or conveyance by an heir of his expected interest in property, made during the lifetime of the ancestor, was void. *Bayler v. Commonwealth* (1861) 40 Pa. 37; 33 L. R. A. 266, note. In some instances, however, such transfers were enforced through the doctrine of estoppel arising from covenants contained in the deed. *Johnson v. Johnson* (1902) 170 Mo. 34, 70 S. W. 241. Courts of equity have generally enforced such transfers as contracts to convey the legal estate or interest when it has ceased to be an expectancy and has become a vested estate. *Thornton v. Louch* (1921) 297 Ill. 204, 130 N. E. 467; *Richey v. Richey* (1920, Iowa) 179 N. W. 830; Ann. Cas. 1916 E, 1241, note. In Kentucky the law is well settled that such a transfer is invalid in both law and equity and that the doctrine of estoppel will not be applied. *Hunt v. Smith* (1921) 191 Ky. 443, 230 S. W. 936. Hence it was impossible in the instant case to give the intended effect to the instrument. This, however, is an insufficient basis for giving it the uncontemplated effect of conveying a one-sixth interest from the mother to the grantee. It was the mother's desire that her six children share her entire estate equally at her decease. It unquestionably was not her intention to convey by the instrument an undivided sixth of her land, leaving only five-sixths to be divided equally at her death among her *six* children. The court allowed the son who had deeded away his interest to share further in the division of the estate at the death of the mother, and treated the consideration given him for his conveyance as an advancement from his mother's estate, a result not within the contemplation of the parties to the deed or to the suit. The son intended to part with his entire interest in his mother's estate and the fact that he received the consideration and bound himself by the covenant of warranty clearly indicates that it was he only who was acting as grantor. It is the rule in many jurisdictions that for a transfer of an expectancy to be valid, it must be made with the knowledge and consent of the ancestor. *Stevens v. Stevens* (1914) 181 Mich. 438, 148 N. W. 225. The mother took part in the transaction with probably some such idea in mind. The court, in attempting to uphold the deed as a valid conveyance of some sort, arrived at an anomalous result which only serves to illustrate the justice of the rule prevailing in most jurisdictions whereby the conveyance of the expectancy is held to be valid.

BANKRUPTCY—PREFERENCES—COMPLETION OF EQUITABLE LIEN WITHIN FOUR-MONTHS PERIOD.—A Maryland corporation, about to liquidate, agreed to transfer its vessels to the defendant. In return, he agreed to give it $73,000, with which to pay its debts, and to organize a new corporation in Delaware to which he would redeliver the vessels upon the execution by it of a mortgage of $100,000 upon the vessels. Upon redelivery to it, the Delaware corporation adopted a resolution authorizing the $100,000 mortgage, but the mortgage was not actually given and recorded until within four months of the filing of a voluntary petition in

bankruptcy. *Held,* that the earlier equitable lien of the defendant on the vessels could not operate as a present consideration to keep the mortgage within the four-months period from being a preferential transfer. *In re New York & Baltimore Inland Transportation Co.* (1921, D. Del.) 276 Fed. 145.

It can no longer be doubted that there are two divergent tendencies in the interpretation of secs. 60 b and 47 a (2) of the Federal Bankruptcy Act as amended in 1910. Act of June 25 (36 Stat. at L. 840). The tendency of the Supreme Court has been toward validating a "transfer" of property made within four months, even in contemplation of insolvency, where there has been an equitable or legal lien, valid as against the bankrupt, acquired in good faith before the four-months period. *Martin v. Commercial Bank* (1918) 245 U. S. 513, 38 Sup. Ct. 176; (1919) 18 MICH. L. REV. 544. These prior rights may arise under an unrecorded conditional sale; *Baker Ice Machine Co. v. Bailey* (1915) 239 U. S. 268, 36 Sup. Ct. 50; an unrecorded mortgage; *Martin v. Bank, supra;* a promise to give as security for a debt a mortgage on a present or future specific *res; Lewin v. Telluride Iron Works Co.* (1921, C. C. A. 8th) 272 Fed. 590; or a promise to give a present or future specific *res* as a pledge. *Sexton v. Kessler* (1911) 225 U. S. 90, 32 Sup. Ct. 657; (1909) 9 COL. L. REV. 624. However these rights may arise, and whether they are enforceable in a court of law or of equity, their significant similarity, from the point of view of bankruptcy law, lies in two elements; they are all valid as against the debtor himself, and by the majority of state statutes, they are invalid only as against a creditor who has actually attached *before* recordation or reduction into possession by the lienor. Several cases, however, in the lower federal courts, have extended the interpretation of the term "preference" to include any completion within the four-months period of the position of a creditor as secured against the claims of other creditors. *Lathrop Bank v. Holland* (1913, C. C. A. 8th) 205 Fed. 143; *In re Pittsburgh-Big Muddy Coal Co.* (1914, C. C. A. 7th) 215 Fed. 703. Such a view of the policy of preserving the bankrupt's estate intact for all of his creditors equally, is a normal and perhaps a desirable extension. (1921) 34 HARV. L. REV. 309. But to support the decision, as in the instant case, on the ground that the trustee, when appointed, is put in the position of an attaching creditor by sec. 47 a (2), as amended in 1910, results, it must be submitted, in a *non sequitur.* If the only attaching creditor who has priority over the equitable or legal lien against the bankrupt is one who actually attaches the goods before the recordation or reduction into possession takes place, there is no general creditor in a position to invalidate the mortgage, and, therefore, the trustee should not be able to do so. *Zehner v. Southern Surety Co.* (1921, C. C. A. 3d) 272 Fed. 954. It is only if the trustee is considered in the position of a creditor who has actually attached at the outset of the four-months period, and not at its termination, that this result can be reached. Such an interpretation of sec. 47 a (2) seems particularly strained in view of the fact that the case which it was expected to correct was one where the first creditor completed his lien by reducing the goods into possession after the end of the four-months period, i. e., after the petition in bankruptcy had been filed, so that the trustee needed to be placed in the position of an attaching creditor at the moment of his appointment only, to have a claim prior to that of the secured creditor. *York Mfg. Co. v. Cassell* (1906) 201 U. S. 344, 26 Sup. Ct. 481; *Potter Mfg. Co. v. Arthur* (1915, C. C. A. 6th) 220 Fed. 843. The real issue, however, is whether such a completion of a prior equitable or legal lien should be considered a preference, which the trustee may avoid under sec. 60 b. And in determining whether the defendant has been preferred to other creditors of the same class, one may well ask whether there are any other creditors similarly situated. But whether it is finally decided that the policy of the Bankruptcy Act is to favor the creditor with the specific claim at the expense of the one with the general claim or vice versa, it is to be hoped that there soon will be a Supreme Court decision on the question.